



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent; and to recover the filing fee from the tenants paid for this application.

The tenants and the lawyer for the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession due to unpaid rent?
- Is the landlord entitled to a monetary Order to recover unpaid rent?

Background and Evidence

The landlord lawyer testifies that this tenancy started in April 01, 2012 for a fixed term of two years. Rent for this unit is \$1,800.00 per month and is due on the 1st of each month. The landlord's lawyer agrees that the tenants and landlord may have had an agreement for rent to be paid on or about the 15th day of each month.

The landlord's lawyer testifies that the tenants paid rent by post dated cheques. The landlord lives overseas and had opened a bank account for the postdated rent cheques

to be paid into. The landlord's lawyer testifies that in January, 2013 the landlord discovered that the tenants rent cheques that had been paid into the account since May, 2012 had been returned. The landlord's bank had not notified the landlord of this prior to January, 2013. However the tenants should have been aware that their rent was not being paid. The landlord's lawyer testifies that the tenants then owed rent arrears from May to March of \$19,800.00.

A 10 Day Notice was issued to the tenants on March 05, 2013. This was served to the tenants by registered mail and was deemed to have been served five days after posting. The tenants had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on March 23, 2013. The landlord's lawyer testifies that the tenants paid rent for February and March by e-mail transfer but failed to pay the balance of rent arrears. The landlord's lawyer testifies that the landlord also claims to recover rent for April, 2013 \$1,800.00. The total amount of outstanding rent is now \$18,000.00. The landlord has reduced the rent owed by \$587.27 for some repairs the tenants paid for and provided invoices to the landlord for these repairs. The landlord therefore seeks a Monetary Order for \$17,412.73 for unpaid rent.

The landlord requests an Order of Possession to take effect on April 30, 2013. The landlord also seeks to recover the \$100.00 filing fee from the tenants.

The tenants agree that they did not pay the rent for nine months from May, 2012 to January, 2013. The tenants agree the landlord served the tenants with a two page 10 Day Notice to End Tenancy. The tenants' disputes that they have not paid rent for April, 2013 and testify that this was also paid by e-mail transfer to a family member of the landlords. The tenants' testify that they had a verbal agreement with that family member of the landlords that if they paid extra rent each month to catch up on the arrears then the tenants could continue to reside in the rental home.

The tenants agree that since making this verbal agreement in February, 2013 they have not paid any extra rent to the landlord. The tenants' testify that this was because they were served with the 10 Day Notice.

The landlord's lawyer testifies that he has no confirmation that the tenants have not paid April's rent but is willing to withdraw that at this time so confirmation can be gained. The landlord's lawyer testifies that he spoke to the family member the tenants referred to and was told that the tenants had agreed to make extra payments. The landlord's lawyer testifies that when he spoke to the female tenant about the extra payments the tenant did not make any commitment to do so or provide a plan showing what payments they were going to make. If the tenants had made an attempt to make up the outstanding rent the landlord may have reconsidered their position.

The tenants attempt at the hearing to make an arrangement to pay the outstanding rent. The landlord's lawyer has taken the position that the landlord no longer wants to make arrangements with the tenants as the tenants have so far only made vague promises without paying any extra rent back since the 10 Day Notice was served.

The tenants presented other testimony that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

Analysis

Section 26 of the *Residential Tenancy Act (Act)* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, as the tenants do not dispute that they owe rent for nine months from May, 2012 to January, 2013 and have provided no evidence that an agreement was entered into for the tenants to pay the rent arrears or that any agreement was abided by

or sanctioned by the landlord; it is my decision that the landlord is entitled to recover these rent arrears to an amount of \$16,200.00. With regard to the rent claimed for April, 2013, I dismiss this section of the landlords claim with leave to reapply in the event the landlords lawyer confirms that rent for April, 2013 has not been paid by the tenants. Furthermore, I deduct the sum of \$587.27 from the outstanding rent as the landlord agrees that the tenants paid for some repairs for which the landlord received invoices to this amount. Consequently, the landlord will receive a Monetary Order to the sum of **\$15,612.73**.

I accept that the tenants were served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Residential Tenancy Act*. The Notice states that the tenants had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenants did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenants are conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice. As the landlord's lawyer has requested an Order of Possession for April 30, 2013 to give the tenants time to find alternative accommodation, I grant the landlord an order of possession for April 30, 2013 pursuant to s. 55 of the *Act*.

As the landlord has been largely successful with this claim I find the landlord is entitled to recover the **\$100.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND largely favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$15,712.73**. The order must be served on the Respondents and is enforceable through the Provincial Court as an order of that Court.

The landlords claim for unpaid rent for April, 2013 is dismissed with leave to reapply if the landlord can determine that the rent for April has not been paid.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **at 1.00 p.m. on April 30, 2013**. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: April 17, 2013

Residential Tenancy Branch

